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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 CENTER FOR BIOLOGICAL DIVERSITY
9 and WILD FISH CONSERVANCY,

10 Plaintiffs,

v.

11 NATIONAL MARINE FISHERIES
12 SERVICE; BARRY THOM, Regional
13 Administrator of National Marine Fisheries
Service West Coast Region; and WILBUR
ROSS, Secretary of Commerce,

14 Defendants.
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Case No. 2:19-cv-00487-MJP

PLAINTIFFS' STATEMENT OF
NON-OPPOSITION TO MOTION
TO INTERVENE OF THE
PACIFIC COAST FEDERATION
OF FISHERMEN'S
ASSOCIATIONS AND COASTAL
TROLLERS ASSOCIATION

NOTE ON MOTION CALENDAR:
June 14, 2019

17 Plaintiffs Center for Biological Diversity and Wild Fish Conservancy submit this Non-
18 Opposition to the Motion to Intervene submitted on May 29, 2019 by Pacific Coast Federation of
19 Fishermen's Associations (PCFFA) and Coastal Trollers Association (CTA) (jointly "Proposed
20 Intervenors") in the-above captioned case. Dkt. No. 15. However, Plaintiffs respectfully request
21 that if the Court grants the motion, it apply reasonable conditions on Proposed Intervenors'
22 participation. Specifically, Plaintiffs request that the Court: (1) require Proposed Intervenors to

23 PLAINTIFFS' STATEMENT OF NON-OPPOSITION
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1 abide by the existing scheduling dates issued in this case; (2) limit Proposed Intervenor to only
2 filing motions joined by the federal Defendants; (3) request that Proposed Intervenor work with
3 the federal Defendants to avoid duplicative briefing; and (4) prohibit any independent discovery
4 by Proposed Intervenor in this case.

5 Proposed Intervenor PCFFA and CTA have generally indicated that these conditions
6 would be acceptable to them. Dkt. No. 15 at 6 (“Applicants will abide by the briefing schedule set
7 by this Court and do not anticipate seeking any independent discovery. Nor do Applicants anticipate
8 inserting any new causes of action or new issues that would unduly delay relief.”). These limitations
9 would conserve judicial resources by reducing the potential for redundancy and facilitate the
10 expeditious resolution of this case.

11 Placing conditions on the participation of intervenors for reasons of judicial efficiency is
12 “a firmly established principle” in federal courts. *Beauregard, Inc. v. Sword Servs., LLC*, 107
13 F.3d 351, 353 (5th Cir. 1997). This principle applies whether an intervenor is granted
14 intervention of right under Rule 24(a) or permissive intervention under Rule 24(b) of the Federal
15 Rules of Civil Procedure.

16 As the Supreme Court has acknowledged and the Advisory Committee Note for Rule 24
17 states, “intervention of right under the amended rule [24(a)] may be subject to appropriate
18 conditions or restrictions responsive among other things to the requirements of efficient conduct
19 of the proceedings.” *Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 383 n.2
20 (1987) (Brennan, J., concurring) (quoting Fed. R. Civ. Pro. 24, 1966 Advisory Committee Note);
21 *see also Fund for Animals v. Norton*, 322 F.3d 728, 737 n.11 (D.C. Cir. 2003) (citing the
22 Advisory Committee Note to support district court’s authority to limit participation of intervenor

of right); *Picayune Rancheria of Chukchansi v. Rabobank*, No. 13-cv-609-LJO-MJS, 2013 U.S. Dist. LEXIS 82115, at *15 (E.D. Cal. June 11, 2013) (“courts may impose reasonable limitations on the participation of intervenors to ensure the efficient adjudication of the litigation”).

Similarly, the Court has broad discretion to place limits on permissive intervention. *Ctr. for Biological Diversity v. Brennan*, 571 F. Supp. 2d 1105, 1130 (N.D. Cal. 2007) (citing *San Jose Mercury News v. U.S. Dist. Court-N. Dist.*, 187 F.3d 1096, 1100 (9th Cir. 1999)); *see also Dep’t of Fair Empl. & Hous. v. Lucent Techs., Inc.*, 642 F.3d 728, 741 (9th Cir. 2011). This is particularly true where parties have similar interests and the conditions are adopted to promote judicial efficiency. *Beauregard*, 107 F.3d at 352-53; *see also Wildearth Guardians v. Salazar*, 272 F.R.D. 4, 20 (D.D.C. 2010) (“In the end, the primary limitation on the district court’s discretion is that any conditions imposed [on intervention] should be designed to ensure the fair, efficacious, and prompt resolution of the litigation”).

Here, PCFFA and CTA both propose to enter this case for one primary purpose: to participate in the shaping of any remedial measures that this Court may order as relief. They specifically focus on the relief requested by Plaintiffs for “additional mitigation measures to reduce the risk of insufficient prey abundance and availability for Southern Resident killer whales,” which they interpret to equate to “restrictions on the west coast commercial salmon harvest.” Dkt. No. 15 at 2, 3. They note that “[t]he additional mitigation measures Plaintiffs ask the court to impose will have a significant economic impact on the Applicants.” *Id.* at 3.

In *Trident Seafoods Corp. v. Bryson*, seafood processing companies challenged an amendment to a management plan for rockfish fisheries off Alaska under the Magnuson-Stevens Fishery Conservation and Management Act and the National Environmental Policy Act. No. 12-

00134-MJP, 2012 U.S. Dist. LEXIS 71923 (W.D. Wash. May 22, 2012), at *2, 4-5. This Court granted a motion to intervene by a fishermen’s association and “catcher vessels” that catch and deliver fish to the processors but limited their participation to the remedy stage of the case. The Court found that “[w]hile the Catchers have a protectable interest in maintaining their current harvest quota share, their interest in maintaining quota shares is not related to the merits.” *Id.* at *15–16.

In this case, Proposed Intervenors’ interests are similarly limited to remedy. Accordingly, Plaintiffs’ requested conditions will allow Proposed Intervenors PCFFA and CTA to participate in this case while not burdening the Court or the parties with excessive motions and briefing or delay of the efficient resolution of this case.

Therefore, should the Court grant PCFFA and CTA’s Motion to Intervene, Plaintiffs respectfully request that the Court adopt the conditions listed above.

Respectfully submitted June 10, 2019,

By: /s/ Julie Teel Simmonds
Admitted *Pro Hac Vice*

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on June 10, 2019, I electronically filed the foregoing PLAINTIFFS'
3 STATEMENT OF NON-OPPOSITION TO MOTION TO INTERVENE OF THE PACIFIC
4 COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS AND COASTAL TROLLERS
5 ASSOCIATION along with the PROPOSED ORDER with the Clerk of the Court using the
6 CM/ECF system, which will automatically serve the documents upon counsel of record.

7 /s/ Julie Teel Simmonds

8 Admitted *Pro Hac Vice*

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